

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 411 Child Care Facilities
SPONSOR(S): Health Care Services Policy Committee; Nehr
TIED BILLS: **IDEN./SIM. BILLS:** SB 834

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|--|-------------------------|-------------------|-----------------------|
| 1) | <u>Health Care Services Policy Committee</u> | <u>13 Y, 0 N, As CS</u> | <u>Schoonover</u> | <u>Schoolfield</u> |
| 2) | <u>Health & Family Services Policy Council</u> | <u></u> | <u>Quinn-Gato</u> | <u>Gormley</u> |
| 3) | <u></u> | <u></u> | <u></u> | <u></u> |
| 4) | <u></u> | <u></u> | <u></u> | <u></u> |
| 5) | <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

Committee Substitute for House Bill 411 amends ch. 402, F.S., to create a definition for household children and requires that certain household children be included in the capacity calculation of licensed family day care homes and large family child care homes. Specifically, the bill defines household children to mean children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, the family day care home operator, the large family child care home operator, or an adult household member who permanently or temporarily resides in the home. The definition also leaves supervision of the operator’s household children to the discretion of the operator unless those children receive subsidized child care to be in the home. The bill provides that household children under the age of 13 be included in the overall capacity of the licensed home when on the premises of a family day care home, large family child care home or on a field trip with children enrolled in child care.

The bill also requires persons advertising or publishing an advertisement for a child care facility, family day care home, or large family child care home to include in the advertisement the state or local agency license number or registration number of such facility or home.

The bill does not appear to have a fiscal impact on state or local governments.

The bill becomes effective on July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

Licensing

The Department of Children and Family Services (DCF) establishes licensing standards that each licensed child care facility in the state must meet.¹ However, current law permits any county with licensing standards that meet or exceed the state minimum standards to either designate a local licensing agency to license child care facilities in the county or contract with DCF to delegate the administration of the state minimum standards in the county to the department.² Currently, DCF is responsible for administering child care licensing and training in 61 of Florida's 67 counties. The remaining six counties (Brevard, Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota) have licensing standards that exceed the state's minimum licensing standards for family day care homes.³ These counties license family day care homes as a function of county government.

Family Day Care Homes

A family day care home is, "[a]n occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit."⁴ Care can be provided for one of the following groups of children, including children under the age of 13 who are related to the caregiver:

- A maximum of four children from birth to 12 months;
- A maximum of three children from birth to 12 months, and other children over the age of 12 months, up to a total of six children;
- A maximum of six preschool children if all are older than 12 months;

¹ s. 402.305(1), F.S.

² s. 402.306(1), F.S.

³ "Child Care Services Placement Options for Legislative Consideration," Office of Program Policy Analysis and Government Accountability, Research Memorandum. December 30, 2009. (email received by: Kerry Schoolfield, Staff Director)

⁴ s. 402.302(7), F.S.

- A maximum of 10 children if no more than five are preschool age and, of those five, no more than two are under 12 months.⁵

Current law requires family day care homes have either a license or registration. The home must have a license if it is presently being licensed under an existing county ordinance, participating in the subsidized child care program, or if the county passes a resolution requiring licensure.⁶ If not subject to license, then the family day care home must register annually with DCF and receive a registration number.⁷

Large Family Child Care Home

A large family child care home is an occupied residence in which: (1) child care is provided for children from at least two unrelated families; (2) for payment, fee, or grant for any of the children receiving care, whether or not operated for profit; and (3) which has at least two full-time child care personnel.⁸ Before seeking licensure, a large family child care homes must first have operated for a minimum of 2 consecutive years, with an operator who has had a child development associate credential or its equivalent for 1 year.⁹ Care can be provided to one of the following groups, which includes those children under 13 years of age who are related to the caregiver:

- A maximum of 8 children from birth to 24 months;
- A maximum of 12 children, with no more than 4 children under 24 months.¹⁰

Large family day care homes are required to be licensed by DCF and subject to minimum standards established by rule.¹¹ DCF is permitted to provide technical assistance to counties and family day care home providers to enable the counties and providers to achieve compliance with minimum standards for large family child care homes.¹²

Background Screening

Personnel of both family day care homes and large family child care homes are subject to level 2 screening and other screening requirements established by law.¹³ Screening includes any member over the age of 12 years of a family day care home operator's family, or persons over the age of 12 years residing with the operator in the family day care home.¹⁴ Family members or persons residing with the operator who are between the ages of 12 and 18 years are not required to be fingerprinted but are screened for delinquency records.¹⁵

Supervision

DCF has promulgated administrative rules related to supervision of children and staffing requirements.¹⁶ These rules apply to all children in the home including children related to the operator. Specifically, operators are responsible for the supervision of children at all times, including when the children are napping or sleeping.¹⁷ When children are napping or sleeping in bedrooms, the rules require that the room's doors must remain open.¹⁸ All children, during the daytime, must have adult

⁵ *Id.*

⁶ s. 402.313(1), F.S.

⁷ s. 402.313(1)(a), F.S.

⁸ s. 402.302(8), F.S.

⁹ *Id.* See also 402.3131(1)(a), F.S.

¹⁰ s. 402.302(8), F.S.

¹¹ ss. 402.3131(1),(7), F.S.

¹² s. 402.3131(1)(b), F.S.

¹³ s. 402.313(3), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 65C-20.009, F.A.C.

¹⁷ 65C-20.009(5)(a), F.A.C.

¹⁸ *Id.*

supervision consisting of watching and directing their activities, both indoors and outdoors.¹⁹ If a child is sick and placed in isolation, he or she must remain within sight and hearing of the operator.²⁰ Additionally, children being diapered or when changing clothes must be attended to at all times.²¹

Advertisement

Any advertisement for a child care facility must include within such advertisement the state or local agency license number of the facility.²² Failure to do so is a misdemeanor of the first degree.²³ This advertisement requirement does not address whether registered family day care homes have to list their DCF-issued registration number in an advertisement. Therefore under current law, registered family day care homes are not required to list their registration number in advertisements.

Effect of Proposed Changes

This bill creates the definition, “household children,” to mean children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, the family day care home operator, large family child care home operator, or an adult household member who permanently or temporarily resides in the home. The effect of this definition will increase the number of children considered to be part of the child care home. Current law only includes children under 13 years of age who are related to the caregiver. This definition counts children who may be related to the care-giving operator as well as to an adult household resident who is not the caregiver, such as a temporary or permanent resident. The definition also conditions supervision of the operator’s household children to the discretion of the operator unless those children receive subsidized child care to be in the home. In effect, DCF inspectors will not be able to restrict an operator’s supervision of their own household children, while still holding them to the same supervision standards for the other children enrolled in child care.²⁴

This bill also amends the definitions for both “family day care home” and “large family child care home” to clarify that “household children” are included in the calculations to determine the maximum numbers of children that can receive care. While current law includes children under 13 years of age that are related to the caregiver in determining the amount of children that can be cared for, the use of “household children” will provide more clarification and direction as to what is considered for calculation purposes. The meaning of the term is expanded to include children related by blood, marriage, or legal adoption to, or who are the legal wards of, the operator or a permanent or temporary adult household member. Thus, children who are related to any adult household guest over the age of 13, such as an adult household guest on vacation with his or her children would also be included in the calculation. Additionally, the bill provides that the household children be included in the overall capacity of the licensed home when they are on the premises or on a field trip with children enrolled in licensed care. The effect of this change will ensure that the capacity is adjusted if household children are not on the premises or participating in a fieldtrip.

The bill amends advertising requirements in s. 402.318, F.S. to include family day care homes and large family child care homes. It also requires registered family day care homes to include their registration numbers in advertisements. Further, the bill also amends the requirements so that they also apply to publications. The effect of this change will protect the consumers from fraudulent child care advertisements and publications.

B. SECTION DIRECTORY:

Section 1. Amends s. 402.302, relating to definitions.

Section 2. Amends s. 402.318, relating to advertisement.

¹⁹ *Id.*

²⁰ 65C-20.009(5)(b), F.A.C.

²¹ 65C-20.009(5)(c), F.A.C.

²² S. 402.318, F.S.

²³ *Id.*

²⁴ 65C-20.009(5), F.A.C.

Section 3. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 2, 2010, the Health Care Services Policy Committee adopted a strike-all amendment to HB 411. The amendment does the following:

- Provides technical changes to the definitions of family day care home and large family child care home.
- Amends the definition of household children to:
 - Removes a redundant reference to level 2 background screening requirement, which is already required in law for all occupants in the facility over 13 years of age.
 - Clarifies the definition to encompass the children who are related by blood, marriage, or legal adoption to, or legal wards of, any adult household member who is permanently or temporarily residing with the operator.
- Amends the advertising requirements so that it requires registered family day care homes to list their registration number in advertisements.
- Deletes the language that required DCF or the local licensing agency to report advertising violations to the state attorney's office.